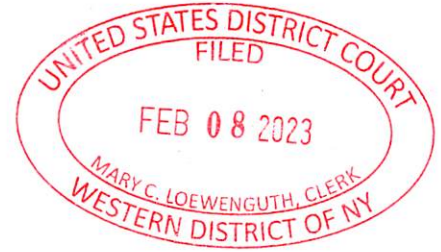


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DAVID KING,

Plaintiff,

v.

20-CV-1426 (JLS)

LM INSURANCE CORPORATION,

Defendant.

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**DECISION AND ORDER**

On October 5, 2020, Plaintiff David King commenced this action related to the denial of his insurance claim under a homeowner's insurance policy issued by Defendant LM Insurance Corporation. Dkt. 1. On February 26, 2021, Defendant moved to dismiss Plaintiff's second claim in the Amended Complaint (Dkt 12)—deceptive acts and practices in violation of N.Y. Bus. Law § 349—for failure to state a claim. Dkt. 15. On March 4, 2021, this Court referred the case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 16. On July 11, 2022, this Court accepted Judge Foschio's Report and Recommendation ("R&R") (Dkt. 20), dated June 23, 2022, that recommended granting Defendant's motion to dismiss Plaintiff's second claim with leave to amend. *See* Dkt. 21. King subsequently filed a Second Amended Complaint, *see* Dkt. 26, and Defendant again moved to dismiss the second claim for relief alleging deceptive acts and practices in violation of N.Y. Bus. Law § 349. Dkt. 27.

Presently before the Court is Judge Foschio's R&R (Dkt. 32), dated December 15, 2022, that recommends Defendant's motion to dismiss be granted, and that Plaintiff's second claim be dismissed for failure to state a claim, without leave to replead.

King filed timely objections on December 29, 2022. Dkt. 33. Specifically, King argues that the deceptive conduct and representations of Defendant were sufficiently consumer-oriented so as to state a viable claim under N.Y. Bus. Law § 349, that King suffered harm as a proximate result of Defendant's deceptive conduct and representations, and the motion to dismiss should be denied. *See generally* Dkt. 33. Defendant responded, *see* Dkt. 35, and King replied, *see* Dkt. 36.

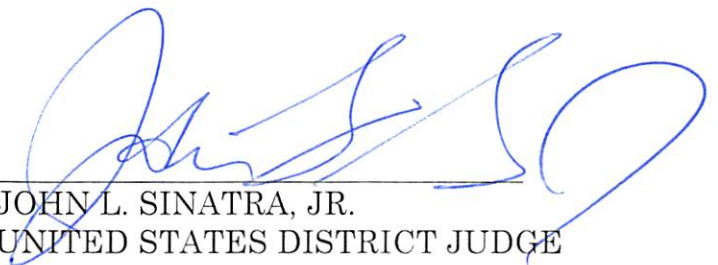
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

This Court has reviewed Judge Foschio's R&R, the objections and responses, and the relevant record in this case. Based on that *de novo* review, the Court accepts Judge Foschio's recommendation to grant Defendant's motion to dismiss.

For the reasons stated above and in Judge Foschio's R&R, Defendant's motion to dismiss (Dkt. 27) is GRANTED. Plaintiff's second claim is dismissed without leave to replead. The case is referred back to Judge Foschio for further proceedings consistent with the referral order in this case. Dkt. 16.

SO ORDERED.

Dated: February 8, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE